



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1998

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
Office of the City Attorney
1000 Throckmorton Street
Fort Worth, Texas 77553

OR98-0845

Dear Mr. Davis:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113677.

The City of Fort Worth (the "city") received a request for "a copy of all internal affairs investigations of former civil service Fort Worth TCS Jimmy Wayne Johnson regarding an incident which occurred on or about January 7, 1995 (Case No. 95-032-A) and the parking citations incident which occurred on or about October 14, 1996 (Case No. 97-027-A)." You assert that the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted documents at issue.¹

Section 552.108, the "law enforcement exception," provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an

¹We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You state that the requested materials

constitute actual law enforcement investigations, conducted by the Fort Worth Police Department Internal Affairs Division. The investigations were originally undertaken to determine possible criminal violations of the Texas Penal Code, as well as penal aspects of the Texas Government Code. Inextricably intertwined spin-off investigations directly based upon information uncovered during the core investigations have since been undertaken, with additional suspects identified thereby. All investigations in this regard, including those referenced above, are currently ongoing, and/or pending. No prosecutions have *as yet* been conducted. However, coordination with the Tarrant County District Attorney's Office has been effected, and continues by the Fort worth Police Department. (Emphasis in original).

Consequently, as the requested information relates to an ongoing criminal investigation, we conclude you have demonstrated how release of the information would interfere with the detection, investigation or prosecution of crime. Therefore, we conclude you may withhold

the requested information pursuant to section 552.108 of the Government Code.² Although section 552.108 authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 113677

Enclosures: Submitted documents

cc.: Mr. Leonard E. Schilling
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(w/o enclosures)

²As we resolve your request under section 552.108, we need not address your arguments under sections 552.101 or 552.103 at this time. In arriving at this conclusion, we note that, although you characterize the investigation currently ongoing within the police department as both administrative and criminal, you have not submitted to this office any records pertaining to the criminal investigation. We base our conclusion, therefore, solely on your representation that the criminal investigation being conducted is independent from the internal affairs investigation. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (where no criminal investigation or prosecution results from an investigation of a police officer for alleged misconduct, section 552.108 is inapplicable).